



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2007-0562; FRL-9746-6]

Additional Air Quality Designations for the 2006 24-Hour Fine Particle National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental amendments; final rule.

SUMMARY: The EPA is taking final action to establish the initial 2006 24-hour fine particle ($PM_{2.5}$) national ambient air quality standards (NAAQS) air quality designations for the Ak-Chin Indian Community located in Pinal County, Arizona, and the Gila River Indian Community located in Pinal County and Maricopa County, Arizona. On November 13, 2009, and February 3, 2011, the EPA promulgated air quality designations nationwide for all but these two areas for the 2006 24-hour $PM_{2.5}$ NAAQS. The EPA deferred initial $PM_{2.5}$ air quality designations for the Ak-Chin Indian Community and the Gila River Indian Community in the earlier promulgated designations.

DATES: The effective date of this rule is [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2007-0562. All documents in the docket are listed in the *www.regulations.gov* index.

Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in

www.regulations.gov or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

In addition, the EPA has established a website for this rulemaking at:

http://www.epa.gov/pmdesignations/2006standards/index.htm. The website includes the EPA's final state and tribal designations, as well as state and tribal initial recommendation letters, the EPA modification letters, technical support documents, responses to comments and other related technical information.

FOR FURTHER INFORMATION CONTACT: Beth W. Palma, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539-04, Research Triangle Park, NC 27711, telephone (919) 541–5432, email at *palma.elizabeth@epa.gov* or Ginger Vagenas, Air Planning Office, U.S. Environmental Protection Agency, Mail Code AIR-2, 75 Hawthorne Street, San Francisco, CA, 94105, phone number (415) 972-3964 or by email at *vagenas.ginger@epa.gov*.

SUPPLEMENTARY INFORMATION: The public may inspect the rule and the technical supporting information by contacting Ginger Vagenas, Air Planning Office, U.S. Environmental Protection Agency, Mail Code AIR-2, 75 Hawthorne Street, San Francisco, CA, 94105, phone number (415) 972-3964.

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I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

APA	Administrative Procedure Act
CAA	Clean Air Act
CBSA	Core Based Statistical Area
CFR	Code of Federal Regulations
D.C.	District of Columbia
EO	Executive Order
EPA	Environmental Protection Agency
FR	<i>Federal Register</i>
NAAQS	National Ambient Air Quality Standards
NTTAA	National Technology Transfer Advancement Act

RFA	Regulatory Flexibility Act
$\mu\text{g}/\text{m}^3$	micrograms per cubic meter
UMRA	Unfunded Mandate Reform Act of 1995
TAR	Tribal (Clean Air Act) Authority Rule
U.S.	United States
VCS	Voluntary Consensus Standards

II. What is the purpose of this action?

This action finalizes the initial air quality designations for portions of Indian Country located in Arizona that were previously deferred. At the time that the EPA finalized designations for the 2006 24-hour $\text{PM}_{2.5}$ NAAQS (74 FR 58688, November 13, 2009), the EPA deferred designations for Pinal County, Arizona, and surrounding counties to evaluate further high fine particle concentrations during 2006-2008, a period which indicated a possible new violating monitor in Pinal County, Arizona. The EPA also deferred designations for areas of Indian Country located within or near the deferred counties. On February 3, 2011 (76 FR 6056),¹ the EPA took action to finalize designations for the deferred area, designating as “nonattainment” state lands in a portion of Pinal County, Arizona (West Central Pinal nonattainment area).² The basis for establishing this nonattainment area was monitored air quality data for 2006-2008 indicating a violation of the NAAQS.³ The EPA designated the remaining portion of Pinal County, the surrounding deferred counties (Cochise, Gila, Graham, La Paz, Maricopa, Pima,

¹ A correction to the February 3, 2011, final rule was published at 76 FR 14812 (March 18, 2011).

² By “state lands” we mean all land within the state boundary that is not within Indian Country, including privately and federally-owned land.

³ 2007-2009 data also showed this area to be in violation of the 2006 24-hour $\text{PM}_{2.5}$ NAAQS, with a 2007-2009 design value of $40 \mu\text{g}/\text{m}^3$.

Yavapai and Yuma counties), and, except as noted below, areas of Indian Country located within those areas, as “unclassifiable/attainment.”

The EPA continued its deferral of the designation of the Gila River Indian Community reservation, which is located in Pinal and Maricopa counties adjacent to the new nonattainment area, and the Ak-Chin Indian Community reservation, which is surrounded by the West Central Pinal nonattainment area, to allow for the completion of the tribal consultation process. (*See* 76 FR 6056, February 3, 2011).

With this action, the EPA is promulgating initial area designations for the areas of Indian Country of the Ak-Chin Indian Community and the Gila River Indian Community in accordance with the requirements of Clean Air Act (CAA) section 107(d).

III. What are the 2006 24-hour PM_{2.5} NAAQS designations promulgated in this action?

In this action, the EPA is designating as “unclassifiable/attainment” the lands of the Ak-Chin Indian Community located in Pinal County, Arizona, and the Gila River Indian Community, located in Pinal County and Maricopa County, Arizona, for the 2006 24-hour PM_{2.5} NAAQS of 35 micrograms per cubic meter (µg/m³). These areas of Indian Country and the designation for each area appear in the table at the end of this final rule, which amends 40 CFR 81.303.

The basis for establishing these areas as unclassifiable/attainment is monitored air quality data from 2009-2011 from nearby monitors that indicate the area is attaining the 2006 24-hour PM_{2.5} NAAQS. The “Cowtown” monitor, which is located in the vicinity of the lands of the Ak-Chin Indian Community and the Gila River Indian Community, previously violated the standard, leading to a nonattainment designation for state lands (West Central Pinal nonattainment area). In 2009, however, PM_{2.5} values recorded at the Cowtown monitor dropped significantly and have

remained below the level of the standard. The 2008-2010 24-hour PM_{2.5} design value for the Cowtown monitor is 31µg/m³ and for 2009-2011 is 26µg/m³.⁴ Therefore, the West Central Pinal nonattainment area is no longer violating the 2006 24-hour PM_{2.5} NAAQS. No other monitor in Arizona is currently violating the 2006 24-hour PM_{2.5} NAAQS.⁵

In October of 2009, the EPA notified the Governor of Arizona and tribal leaders of Tribes with areas of Indian Country located in Pinal and Maricopa counties that the Cowtown monitor in Pinal County was violating the 2006 24-hour PM_{2.5} standards based on the most recent (2006-2008) air quality monitoring data at that time. Due to this new violation and the need for additional time to collect data and evaluate the area to determine an appropriate nonattainment area boundary, the EPA deferred the area designation of Pinal County, Maricopa County (the other county comprising the Phoenix-Mesa-Scottsdale core-based statistical area (CBSA)), the seven nearby counties (Cochise, Gila, Graham, La Paz, Pima, Yavapai and Yuma counties) surrounding the Phoenix-Mesa-Scottsdale CBSA,⁶ and areas of Indian Country for the 2006 24-hour PM_{2.5} standards. The EPA then followed the designations process set forth in section 107(d) of the CAA, which culminated in the creation of the West Central Pinal nonattainment area for the 2006 24-hour PM_{2.5} NAAQS (76 FR 6056, February 3, 2011). Designations for nearby areas of Indian Country remained deferred to allow the completion of the tribal consultation process.

⁴ See memorandum titled, "Data Summary for Cowtown Monitor" dated August 14, 2012, from Michael Flagg, EPA Region 9 Air Quality Analysis Office, to Ginger Vagenas, EPA Region 9 Air Planning Office, available in the docket for this action.

⁵ See "US EPA Air Quality System Preliminary Design Value Report" and map titled "2009-2011 Design Values for the 2006 24-Hour Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards," available in the docket for this action.

⁶ As described in the EPA's rule promulgating initial PM_{2.5} designations for the 2006 24-hour standards, in evaluating areas potentially contributing to a monitored violation, the EPA examined those counties located in the surrounding metropolitan statistical area (in this case, Pinal and Maricopa counties), and those nearby counties one or two adjacent rings beyond. See "Air Quality Designations for the 2006 24-hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards," 74 FR 58688, November 13, 2009, page 58694.

The Gila River Indian Community and the Ak-Chin Indian Community recommended that the EPA designate their lands “attainment/unclassifiable” on February 11, 2010, and September 2, 2010, respectively. On April 30, 2010, the EPA offered formal consultation to the leaders of the Ak-Chin Indian Community and the Gila River Indian Community and has discussed the PM_{2.5} designation with the tribes on several occasions. On April 5, 2012⁷, the EPA contacted the Gila River Indian Community and on August 13, 2012⁸, the EPA contacted the Ak-Chin Indian Community to provide opportunities to discuss the intended designations of “unclassifiable/attainment” for their areas of Indian Country based on 2009-2011 data. Both tribes subsequently indicated that no further consultation was necessary.

All correspondence and supporting documentation related to deferred final designations can be found in docket ID No. EPA-HQ-OAR-2007-0562.

IV. Where can I find information forming the basis for this rule and exchanges between the EPA and tribes related to this rule?

Information providing the basis for the action in this notice, including applicable EPA guidance memoranda, and copies of correspondence regarding this process between the EPA and the Tribes are available in the identified docket. All docket information is available for review at the EPA Docket Center listed above in the ADDRESSES section of this document and on our designation website at <http://www.epa.gov/pmdesignations/2006standards/index.htm>. Other related state and tribal-specific information is available at the offices of EPA Region 9.

⁷ See memorandum to file titled, “Confirmation from Gila River Indian Community that Consultation Regarding 2006 24-hr PM_{2.5} Designation is Complete” dated August 21, 2012, from Colleen McKaughan, EPA Region 9 Associate Director Air Division, available in the docket for this action.

⁸ See memorandum to file titled, “Communication with Brenda Ball about Potential Consultation with Ak-Chin Regarding 2006 24-hr PM_{2.5} Designation” dated August 21, 2012, from Maeve Foley, EPA Region 9 Grants and Program Integration Office, available in the docket for this action.

V. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, the EPA assigns designations to areas as required.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action responds to the requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This rule responds to the requirement to promulgate air quality designations after promulgation of a new or revised NAAQS. This requirement is prescribed in the CAA section 107. The present final rule does not establish any new information collection requirements.

C. Regulatory Flexibility Act

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice-and-comment

requirements under the APA or any other statute because the rule is subject to CAA section 107(d)(2)(B), which does not require that the agency issue a notice of proposed rulemaking before issuing this rule.

D. Unfunded Mandates Reform Act

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It does not create any additional requirements beyond those of the CAA and PM_{2.5} NAAQS (40 CFR 50.13). The CAA establishes the process whereby states take primary responsibility in developing plans to meet the PM_{2.5} NAAQS.

E. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the process whereby states take primary responsibility in developing plans to meet the PM_{2.5} NAAQS. This rule will not modify the relationship of the states and the EPA for purposes of developing programs to implement the PM_{2.5} NAAQS. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have tribal implications because the areas of Indian Country affected by this rule are being designated as “unclassifiable/attainment,” and thus do not have a substantial cost or direct effect on one or more Indian Tribes, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and tribes. The rule does not alter the relationship between the federal government and Tribes as established in the CAA and the TAR. Thus, Executive Order 13175 does not apply to this action.

However, because this action designates areas of Indian Country, the EPA consulted with tribal officials early in the process of developing this regulation to ensure meaningful and timely input into its development. At the beginning of the designations process, letters were sent to tribes expected to be impacted by designations for the 2006 24-hour PM_{2.5} NAAQS. These letters not only informed the tribes of the overall designations process, but also offered consultation to ensure early communication and coordination. Additionally, letters were sent to potentially affected tribes indicating the EPA’s intended designations for their areas of Indian Country. These letters offered an additional opportunity for consultation. All consultations were completed prior to promulgating this rule. During consultation, the primary concerns raised by tribes included the following: impact of a potential nonattainment designation on future economic development; appropriateness of using data from monitors not on tribal land to characterize the air quality on tribal land; and ensuring final decisions are consistent with the EPA’s “Policy for Establishing Separate Air Quality Designations for Areas of Indian Country” (December 20, 2011). During the consultation with the tribes affected by this regulatory action, the EPA’s office in Region 9 ensured that the tribes fully understood the basis for the EPA’s

intended designations decisions and how those decisions are informed by the most recent certified air quality data and all other relevant information, including the EPA's "Policy for Establishing Separate Air Quality Designations for Areas of Indian Country." To the extent possible, the EPA included the tribes' input into the final decision-making process for designations of their areas of Indian Country for the 2006 24-hour PM_{2.5} NAAQS.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA of 1995, Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through the Office of Management and Budget, explanations when the agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because this rule does not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule

will be effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

L. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”

This rule designating areas for the 2006 24-hour PM_{2.5} NAAQS is “nationally applicable” within the meaning of section 307(b)(1). This rule establishes designations for certain areas for the 2006 24-hour PM_{2.5} NAAQS. In addition, this action relates to the prior nationwide rulemakings in which the EPA promulgated designations for numerous other areas nationwide. At the core of this rulemaking is the EPA’s interpretation of the definition of nonattainment under section 107(d)(1) of the CAA, and its application of that interpretation to areas across the country. In determining which areas should be designated “nonattainment” (or conversely, should be designated attainment or unclassifiable), the EPA used an analytical approach that it applied consistently across the U.S. in this rulemaking, and in the prior related rulemakings.

For the same reasons, the Administrator also is determining that the final designations are of nationwide scope and effect for the purposes of section 307(b)(1). In these circumstances, section 307(b)(1) calls for the Administrator to find the rule to be of “nationwide scope or effect” and for venue to be in the D.C. Circuit. Thus, any petitions for review of final designations must

be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the *Federal Register*.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 19, 2012

Lisa P. Jackson,
Administrator.

PART 81--DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Authority: 42 U.S.C. 7401, *et seq.*

2. In §81.303, the “Arizona--PM_{2.5} (24-hour NAAQS)” table is amended by:

- The revised text reads as follows.

* * * * *

	Designation for the 1997 NAAQS ^a		Designation for the 2006 NAAQS ^a	
Designated area	Date ¹	Type	Date ²	Type

Maricopa County.....	.....	Unclassifiable/	.....	Unclassifiable/
(remainder,	Attainment	Attainment
excluding lands of				
the Gila River				
Indian Community)				

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Lands of the Gila River			Unclassifiable/		[insert	Unclassifiable/
Indian Community in			Attainment		date 30	Attainment
Pinal County and	|	.....	|	.....	|	days	|
Maricopa County	|	.....	|	.....	|	after	|
	|	.....	|	.....	|	PUBLI-	|
	|	.....	|	.....	|	CATION	|
	|	.....	|	.....	|	DATE]	|
Lands of the Ak-Chin	|	.....	|	Unclassifiable/	|	[insert|	Unclassifiable/
Indian Community in			Attainment		date 30	Attainment
Pinal County			days	
			after	
			PUBLI-	
			CATION	
			DATE]	

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^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is 90 days after January 5, 2005, unless otherwise noted.

² This date is 30 days after November 13, 2009, unless otherwise noted.

[FR Doc. 2012-26405 Filed 10/25/2012 at 8:45 am; Publication Date: 10/26/2012]